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COMMERCIAL

RECONSTRUCTION AND CONDITIONAL SALE
AGREEMENT

Dated as of June 1, 1972

among

FIRST SECURITY BANK OF UTAH,
NATIONAL ASSOCIATION, as Agent

ACF INDUSTRIES, INCORPORATED

FIRST NATIONAL BANK OF NEVADA

and

THE WESTERN PACIFIC RAILROAD COMPANY

RECONSTRUCTION AND CONDITIONAL SALE AGREEMENT dated as of June 1, 1972, among FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION (hereinafter called the Vendor), as Agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement), FIRST NATIONAL BANK OF NEVADA (hereinafter called the Vendee), the corporation named in Item 1 of Annex A hereto (hereinafter called the Builder) and THE WESTERN PACIFIC RAILROAD COMPANY (hereinafter called the Railroad).

WHEREAS the Vendee has acquired or will acquire all right, title and interest in certain railroad equipment (hereinafter called the Hulks) pursuant to a Hulk Purchase Agreement (hereinafter called the Hulk Purchase Agreement), dated as of June 1, 1972, with the seller named in Item 2 of Annex A hereto (hereinafter called the Seller), and will subject the same to a security interest in favor of the Vendor for the purpose of causing the Hulks to be reconstructed; and

WHEREAS the Vendor has acquired or will acquire security title to the Hulks pursuant to the Transfer Agree-

ment (hereinafter called the Transfer Agreement) dated as of June 1, 1972, between the Vendor and the Vendee, in substantially the form of Annex B hereto, for the purpose of causing the same to be reconstructed as described herein and thereupon selling its interest in the same to the Vendee and the Vendee has agreed to purchase the Hulks as so reconstructed (the reconstructed equipment described in Schedule A hereto being hereinafter called the Equipment); and

WHEREAS the Hulks have been or will be delivered to the Builder and the Builder has agreed with the Vendor to cause the Hulks to be reconstructed as required hereby to enable delivery of the Equipment to be made to the Vendee in accordance herewith; and

WHEREAS the Vendee and the Railroad are entering into a Lease of Railroad Equipment, dated as of the date hereof (hereinafter called the Lease), substantially in the form of Exhibit B attached hereto, leasing the Equipment to the Railroad, subject to this Agreement, which Lease will be filed with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act concurrently with the filing of this Agreement thereunder; and

WHEREAS the Railroad, in order to obtain the use of the Equipment and to induce the Vendor to enter into this Agreement, is willing to guarantee to the Vendor and the Builder the due and

punctual payment of certain sums payable by, and the due and punctual performance of all other obligations of, the Vendee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Construction and Sale. Pursuant to this Agreement, the Builder will cause the Hulks to be reconstructed into the Equipment as described in Schedule A hereto and will deliver the Equipment to the Vendee on behalf of the Vendor and the Vendee will accept delivery of and the Vendor and the Vendee will pay for the Equipment as hereinafter provided, each unit of which shall be standard gauge railroad equipment reconstructed in accordance with the specifications referred to in Schedule A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Vendee, the Vendor, the Builder and the Railroad (which specifications and modifications, if any, are by reference made a part of this Agreement as fully as though expressly set forth herein and are hereinafter called the Specifications). The design, quality and component parts of the Equipment

will conform, on the date of delivery of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications, and to all standards recommended by the Association of American Railroads, reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of delivery of the Equipment.

ARTICLE 2. Inspection and Delivery. The Builder will deliver the units of the Equipment, on behalf of the Vendor, to the Vendee at such place or places within the United States of America specified in Schedule A hereto or if Schedule A does not specify a place or places, at the place or places within the United States designated from time to time by the Vendee and the Railroad, freight charges, if any, prepaid, on or before December 31, 1972; provided, however, that the Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the filing by or against the Railroad of a petition for reorganization under Section 77 of the Bankruptcy Act.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plants, equip-

ment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for prior to December 31, 1972, shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence or pursuant to Article 3, the parties to this Agreement shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. The Vendor and the Vendee shall have no obligation to accept or pay the Builder or the Seller for any Equipment so excluded from this Agreement but may, in lieu thereof, assign all their right, title and interest therein to the Railroad and the Railroad will indemnify and hold harmless the Vendor and the Vendee for any and all claims and liabilities in respect thereof.

If the Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the second paragraph of Article 2 hereof or if any Equipment is excluded from this Agreement pursuant to the first paragraph of Article 3 hereof or if the aggregate Purchase Price in respect of all the Equipment proposed to be settled for on any Closing Date shall not have been paid to the Seller and the Builder as their interests shall appear (otherwise than due

to the failure of the Builder to comply with the provisions thereof contemplated to be complied with by the Builder), the Railroad shall be obligated to accept such equipment and pay the full Purchase Price therefor to the Builder and the Seller as their interests may appear, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, if the Builder and the Railroad shall mutually agree by means of a conditional sale, equipment trust or other appropriate method of financing.

During reconstruction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Railroad) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the reconstruction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Railroad) shall execute and deliver to the

Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee on the date of such Certificate of Acceptance and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof.

ARTICLE 3. Purchase Price and Payment. The cost of the Hulks (the "Hulk Purchase Price") and the estimated base reconstruction cost per unit of the Equipment are set forth in Schedule A hereto. The base reconstruction cost is subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Railroad and the term "Reconstruction Cost" shall mean the base reconstruction cost as so increased or decreased. The term "Purchase Price" as used herein means the sum of the Hulk Purchase Price and the Reconstruction Cost. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) for which settlement has theretofore been or is then being made under this Agreement and the Reconstruction and Conditional Sale Agreement referred to in Item 3 of Annex A hereto (hereafter called the Other Agreement), would, but for the provisions of this sentence, exceed \$6,750,000 (or such higher amount as the

Vendee may at its option agree to) the Builder and the Railroad will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion and any concurrent exclusion under the Other Agreement, reduce the aggregate Invoiced Purchase Prices under both this Agreement and the Other Agreement to not more than \$6,750,000 (or such higher amount as aforesaid).

For the purpose of settlement therefor, the Equipment shall be divided into not more than four groups of units of the Equipment (each such group being hereinafter called a Group) unless the Vendee, the Vendor and the Builder shall otherwise agree. The term "Closing Date" with respect to any Group shall mean such date not earlier than August 1, 1972, and not later than December 31, 1972, occurring not more than ten business days following presentation by the Builder to the Vendee of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Builder by written notice delivered to the Vendee and the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, holidays and any other day on which banking institutions in

Salt Lake City, Utah, or New York, New York, are authorized to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date with respect to each Group (i) an amount equal to 20% of the aggregate Purchase Price of such Group plus (ii) the amount by which (x) 80% of the Purchase Price of all units of the Equipment covered by this Agreement and the Other Agreement for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of \$5,400,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a) and pursuant to clause (ii) of subparagraph (a) of the third paragraph of Article 3 of the Other Agreement (said excess of clause (x) over clause (y) being hereinafter called the Excess Amount); provided, however, that if settlement is also being made on such Closing Date for units of

railroad equipment under the Other Agreement, the amount payable pursuant to clause (ii) of this subparagraph (a) shall be that proportion of the Excess Amount which the Invoiced Purchase Prices payable on such Closing Date under this Agreement is of the aggregate of all the Invoiced Purchase Prices payable on such Closing Date under this Agreement and the Other Agreement; and

(b) In 23 semiannual instalments, as hereinafter provided, an amount (hereinafter called the Conditional Sale Indebtedness) equal to the aggregate of the Invoiced Purchase Prices of the units of the Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the Conditional Sale Indebtedness shall be payable on January 1, 1974, and subsequent instalments shall be payable semiannually thereafter on each January 1 and July 1 (or, if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date, to and including January 1, 1985. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date upon which such Conditional Sale Indebtedness was incurred at the rate of 8-1/4% per annum, and such interest shall be payable, to the extent

accrued, on each January 1 and July 1 (or, if any such date is not a business day, on the next succeeding business day) commencing January 1, 1973. The principal amount of the Conditional Sale Indebtedness payable on each of the 23 Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 23 installments of principal and interest will completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor and the Railroad promptly after each Closing Date a payment schedule showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay interest at the rate of 9-1/4% per annum, to the extent legally enforceable, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and, if requested by the Vendor or where made to the Builder, shall be made by bank wire transfer. Except as

provided in Article 6 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate that the Vendee will furnish to the Vendor that portion of the Purchase Price for the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that such portion plus an amount equal to the balance of such Purchase Price shall be paid by the Vendor to the Builder and the Seller, as their interests may appear.

The Vendor shall be under no obligation to make payment to the Builder or the Seller unless there shall have theretofore been delivered to the Vendor the following documents, in form and substance satisfactory to it and its special counsel hereinafter mentioned:

(a) the Certificate or Certificates of Acceptance and the Certificate or Certificates of Delivery contemplated by § 1 of the Lease with respect to the Equipment in the Group;

(b) invoice of the Builder for the reconstruction of the Equipment in the Group and of the Seller for the Hulks so reconstructed accompanied by or having endorsed thereon a certification by the Vendee and the Railroad as to the correctness of the price stated therein;

(c) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Vendor and the Investors referred to in the Finance Agreement, dated as of such Closing Date stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Railroad and is a valid agreement binding upon the Railroad, (ii) this Agreement has been duly authorized, executed and delivered and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) security title to the units of Equipment in such Group is validly vested in the Vendor, free of all claims, liens, security interests and other encumbrances except only the rights of the Vendee under this Agreement, and the rights of the Railroad under the Lease, (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of this Agreement, or if any approval is necessary, it has been obtained, (v) this Agreement and the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Vendor hereunder in any State of the United States of America or the District of

Columbia and (vi) registration of this Agreement is not required under the Securities Act of 1933, as amended; and said opinion shall cover such other matters as shall be reasonably requested by the Vendor;

(d) an opinion or opinions of counsel for the Vendee, dated as of such Closing Date, addressed to the Vendor, stating that the Transfer Agreement, this Agreement and the Lease have been duly authorized, executed and delivered by the Vendee and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding instruments enforceable in accordance with their terms; and

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, addressed to the Vendor, covering the matters referred to in clauses (i) and (ii) of subparagraph (c) in so far as they relate to the Railroad and clauses (iii) and (iv) of subparagraph (c) and stating that the Railroad is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(f) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Vendor, covering the matters referred to in clause (ii) of subparagraph (c) in so far as it relates to the Builder and stating that (i) the Builder is a duly organized and validly existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) at the time of delivery of the units of the Equipment in such Group to the Vendor hereunder, such units were free of all claims, liens, security interests and other encumbrances of the Builder or of anyone claiming through the Builder.

Counsel may qualify any opinion as to the enforceability of any instrument by a general reference to bankruptcy, reorganization, moratorium or other laws affecting enforcement of creditors' rights generally. Counsel for each of the parties may assume due authorization, execution and delivery of the documents executed by the other parties in rendering its opinion; counsel for the Railroad may in rendering its opinion rely on the opinion of counsel for the Builder as to title to the Equipment at the time of delivery thereof under the Reconstruction and Conditional Sale Agreement and in giving the opinions specified in subparagraphs (e), and (f), counsel may rely, to the extent appropriate, as to any matter governed by the law of Nevada on the opinion of counsel for the Vendee as to such matter. In giving its opinion pursuant to

subparagraph (c), counsel may rely on the opinion of counsel for the Railroad, the Builder and the Vendee as to all matters of law of jurisdictions other than the United States or the State of New York involved in said opinion.

The obligation of the Vendor to make payment for the Equipment is expressly conditioned on the Vendor having on deposit pursuant to the Finance Agreement sufficient available funds to make such payment. The Vendor shall not be obligated to make any such payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in this Agreement could constitute an event of default, shall be subsisting under this Agreement or if a petition for reorganization under Section 77 of the Bankruptcy Act shall be filed by or against the Railroad unless such petition shall be dismissed.

Notwithstanding anything to the contrary herein expressed or implied, the parties hereto agree that the Vendor shall have no obligation with respect to the reconstruction of the Hulks and delivery of the Equipment hereunder to the Vendee except to the extent that the Builder has fully complied with the Builder's obligations with respect to such reconstruction and delivery.

The Railroad hereby represents and warrants to the Builder, the Vendor and the Vendee, that (i) this Agreement has been duly authorized by it and lawfully executed and delivered for a valid consideration and (assuming due authorization, execution and delivery by the other parties hereto) is a valid and existing agreement binding

upon the Railroad in accordance with its terms; and
(ii) no approval is required from any regulatory body with respect to the entering into or performance by the Railroad or the Seller of this Agreement or the Hulk Purchase Agreement.

The Builder hereby represents and warrants to the Vendor and the Vendee that this Agreement has been duly authorized by it and lawfully executed and delivered for a valid consideration and (assuming due authorization, execution and delivery by the other party or parties thereto) this Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon it in accordance with its terms.

It is agreed that the obligation of the Vendee to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 3 is specifically subject to the fulfillment, on or before each Closing Date, of the following conditions (any of which may be waived by the Vendee):

- (a) the Vendor shall concurrently pay or cause to be paid to the Builder and the Seller the amounts contemplated to be paid by it as provided in this Article 3 and the documents required by this Article 3 shall have been delivered;

(b) no event of default of the Railroad specified herein or Event of Default of the Railroad under the Lease, nor any event which with lapse of time and/or demand provided for herein or in the Lease could constitute such an event of default or Event of Default, shall have occurred and be continuing; and

(c) the Vendee shall have received (i) the opinion of counsel required by § 13 of the Lease and (ii) such other documents as the Vendee may reasonably request.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), it is understood and agreed by the Vendor that the liability of the Vendee for all payments to be made by it under this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of Article 3 hereof and Article 19 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee (which terms as used in this paragraph includes the Vendor to the extent payments under the Lease are made to the Vendor as contemplated therein) shall have actually received sufficient "income or proceeds from the Equipment" to make such payments.

Except as provided in the next preceding sentence, the Vendor agrees that the Vendee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Vendee or any assignee of the Vendee as above provided. In addition, the Vendor agrees and understands that the Vendee (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) or of any of the Railroad's obligations thereunder and (ii) shall have no obligation, duty or other liability whatsoever to see to or be responsible for the performance or observance by the Railroad of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Railroad and the Equipment and to the Vendor's rights under the Lease against the Railroad and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any

assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 6 hereof) paid for or with respect to the Equipment pursuant to the Lease and (b) any and all payments or proceeds received by the Vendee or any assignee of the Vendee under the Lease or for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall be required to discharge the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon, due and payable on, or on the business day after, the date such amounts received by the Vendee or any assignee of the Vendee were required to be paid pursuant to the Lease or as shall be required to discharge any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Vendee or any assignee

of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof, required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or on the business day after, the date corresponding to the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment or the Railroad, as guarantor, as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon. Notwithstanding anything to the contrary contained in Article 15 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment against the Vendee to such amount.

ARTICLE 4. Title to the Equipment. The Vendor

shall and hereby does retain the full security title to and property in the Hulks delivered to the Builder hereunder for reconstruction and shall continue to retain such title during the entire period that the Hulks are being reconstructed and thereafter in the Equipment until the Vendee shall have made all its payments under this Agreement in respect of the Equipment and shall have kept and performed all its agreements herein contained in respect thereof, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Railroad as provided in this Agreement. Any and all additions to the Hulks and the Equipment, and any and all parts installed on and additions and replacements made to any unit of the Hulks or the Equipment shall constitute accessions thereto and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 6 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute

right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor.

However, the Vendor, if so requested by the Vendee at that time, will (a) execute and deliver to the Vendee a release of the Vendor's security interest in the Equipment transferring its security title thereto and property therein to the Vendee, free of all liens, security interests and other encumbrances created or retained hereby, (b) execute and deliver to the Vendee for filing in all necessary public offices, such instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to such Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 6 hereof in respect of such Equipment and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such release or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such release or instruments or to file such certificate within a reasonable time after written demand by

the Vendee.

ARTICLE 5. Taxes. All payments to be made by the Vendee and the Vendor hereunder will be free of expense to the Vendor and the Builder for collection or other charges and will be free of expense to the Vendor and the Builder with respect to the amount of any local, state, Federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the

title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor or the Builder directly and paid by the Vendor, or the Builder, as the case may be, the Vendee shall reimburse the Vendor or the Builder, as the case may be, upon presentation of an invoice therefor, and any amounts so paid by the Vendor or the Builder shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor or the Builder, as the case may be, for any impositions so paid unless the Vendor or the Builder shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor or the Builder, as the case may be), or unless the Vendee shall have approved the payment thereof.

ARTICLE 6. Maintenance and Repaid; Casualty Occurrences. The Vendee agrees that, at its own cost and expense, it will cause each unit of the Equipment to be maintained in good order and repair.

In the event that any unit of the Equipment shall

be or become worn out, lost, stolen, destroyed, or, in the opinion of the Vendee or the Railroad, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (each such occurrence being herein called a Casualty Occurrence), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding date on which interest is payable pursuant to Article 3 hereof, but in no event later than the date the Railroad shall have paid the Casualty Value pursuant to Section 6 of the Lease, the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 6) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph or received as the proceeds of insurance required by the fifth paragraph of this Article 6 shall be applied on the date that such Casualty Value is paid to prepay the Conditional Sale Indebtedness in respect of the unit suffering the Casualty Occurrence, and the Vendee will promptly furnish to the Vendor and the Railroad a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 3 hereof, so that the remaining payments shall be substantially equal.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 6), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of the Equipment made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price

of said Equipment.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment for the benefit of the Vendor and the Vendee at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it. Such insurance shall be payable to the Vendor, the Vendee and the Railroad as their interests may appear.

It is further understood and agreed that any insurance proceeds received by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Vendee to the Vendor in respect of Casualty Occurrences pursuant to the second paragraph of this Article 6. If the Vendor shall receive any other insurance proceeds in respect of insurance carried in respect of such units suffering a Casualty Occurrence after the Vendee shall have made payments pursuant to this Article 6 without deduction for such insurance proceeds, the Vendor shall pay such

insurance proceeds to the Vendee. All proceeds of insurance received by the Vendor in respect of insurance carried on any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

So long as an event of default specified in Article 15 hereof shall not have occurred and be continuing, any insurance proceeds paid to the Vendor prior to the Payment Date next succeeding a Casualty Occurrence shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest or (ii) open market commercial paper rated at least "A-1" or its equivalent by Standard & Poor's Corporation or a comparable national rating agency or (iii) certificates of deposit of banks in the United States of America having capital and surplus aggregating at least \$25,000,000, in each case maturing in not more than one year from the date of such investment (all such investments being hereinafter called Investments), as may be specified in any such direction. Any such Investments shall from time to time be

sold and proceeds reinvested in such other Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon the sale or payment at maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 6. Any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly cause to be paid to the Vendor an amount equal to such deficiency. The Railroad will cause to be paid all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

ARTICLE 7. Obligations of Railroad, as Guarantor.

The Railroad, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of the Conditional Sale Indebtedness and interest thereon, and unconditionally guarantees to the Vendor and the Builder the due and punctual performance of all obligations of the Vendee under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Vendee under this Agreement (except for the sums payable by the Vendee pursuant to subparagraph (a) of the third paragraph of Article 3

hereof), will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Vendee in any such obligations or payments the Railroad agrees punctually to perform or pay the same, irrespective of any enforcement against the Vendee of any of the rights of the Vendor hereunder.

The Railroad agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity or enforceability of this Agreement or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of the last paragraph of Article 3 hereof or any other circumstances which might otherwise limit the recourse of the Vendor to the Vendee. The Railroad hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Railroad hereunder.

In the event that the Railroad shall make any payments to the Vendor on account of its guaranty hereunder, the Railroad agrees that it shall not acquire any rights, by subrogation or otherwise, against the Vendee or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Railroad; provided, however, that after the payment to the Vendor of all sums payable under this Agreement, the Railroad shall, by subrogation, be entitled to the rights of the Vendor against the Vendee by reason of such payment by the Railroad, to the extent, but only to the extent, that the Vendee has received "income and proceeds from the Equipment" (as defined in Article 3 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and subject to the limitations contained in the last paragraph of said Article 3, of sums payable by the Vendee to the Vendor hereunder.

ARTICLE 8. Reports and Inspections. On or before August 1 in each year, commencing with the year 1973, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as of the preceding June 30 the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of

the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, such Equipment is marked as required by Article 9 hereof. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the continuance of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be

required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such name and words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of a new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Vendee may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Railroad or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Railroad or its affiliates to use the Equipment

as permitted under the Lease. Nothing contained in this Article 9 shall prevent the Vendee from allowing the Equipment to be lettered with its name, initials or other insignia.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration of any unit of the Equipment, or in the event that any equipment or appliance on any such unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such unit in order to comply with such laws or rules, the Vendee will make such altera-

tions, changes, replacements and additions at its own expense; provided, however, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Railroad as permitted by, and for use as provided in, the Lease, but the rights of the Railroad and its permitted assigns (the Railroad hereby so acknowledging) under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; provided, however, that so long as the Railroad shall not be in default under the Lease or under this Agreement in its capacity as guarantor or otherwise, the Railroad shall be entitled to the possession and use of the Equipment. The Vendee hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under

and as defined in the Lease until the Vendor shall have received notice in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Railroad or served by the Railroad upon it in connection therewith.

So long as an event of default specified in Article 15 hereof shall not have occurred and be continuing, the Vendee shall be entitled to the possession and use of the Equipment, and the Equipment may be used upon the lines of railroad owned or operated by the Railroad or any affiliate of the Railroad (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Railroad or any such affiliate has trackage or other operating rights, or over which railroad equipment of the Railroad or any such affiliate is regularly operated pursuant to contract, and the Equipment may be used upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Agreement; provided, however, that the Vendee shall not assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America. Except as otherwise provided in the Lease, the

Vendee may also lease the Equipment to any other railroad company with the prior written consent of the Vendor; provided, however, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) a copy of such lease shall be furnished to the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to the Equipment, or any part thereof, or the interest of the Vendor therein, equal or superior to the Vendor's title thereto or property therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and any appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely

affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessment or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of security title to the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation,

use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title thereto remains in the Vendor or the transfer or release of security title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Railroad or the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance or release of security title to, the Equipment, as provided in the last paragraph of Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Vendor makes no warranties whether written, oral, statutory or implied including the warranties of

merchantability or fitness for a particular purpose, with respect to the Hulks or the Equipment or in connection with this Agreement or the delivery and sale of the Equipment hereunder.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification contained in Items 4 and 5 of Annex A hereto are herein incorporated as part of this Article 13.

The warranties and indemnities of the Builder contained in this Article 13 and in any other Articles hereof and all other covenants and obligations of the Builder con-

tained in this Agreement shall inure to the benefit of, and be enforceable by, any lessee, assignee or transferee of this Agreement or of any units of the Equipment reconstructed by the Builder hereunder.

The Railroad agrees to indemnify and save harmless the Vendor and the Vendee against any charge or claim made against either of them and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Vendor or the Vendee may incur in any manner by reason of entering into or performing the Hulk Purchase Agreement, this Agreement, any of the instruments or agreements referred to therein or herein or contemplated thereby or hereby or the ownership of, or which may arise in any manner out of or as the result of the ordering, acquisition, purchase, reconstruction, use, operation, condition, delivery, rejection, storage or return of, any of the Hulks or any units of the Equipment and to indemnify and save harmless the Vendor and the Vendee against any charge, claim, expense, loss or liability on account of any accident in connection with the reconstruction, operation, use, condition, possession or storage of any of the Hulks or any units of the Equipment resulting in damage to property or injury or death to any person. The indemnities contained in this Article shall survive delivery of the Equip-

ment and the performance of all other obligations under this Agreement and the Hulk Purchase Agreement and the termination of this Agreement and/or the Hulk Purchase Agreement.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including without limitation, rights and remedies against the Vendee and the Railroad) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without the Vendee, assignee or transferee assuming any obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertakings of the Railroad hereunder, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from,

any of the obligations of the Builder to reconstruct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13 hereof or relieve the Vendor, the Vendee or the Railroad of their respective obligations to the Builder contained or referred to in Articles 1, 2, 3, 5, 7 and 13 hereof and this Article 14, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee and the Railroad, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Vendee will, whenever requested by the assignee, change the markings on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment, such markings to be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Railroad and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing (without regard to the limitations provided for in the last paragraph of Article 3 hereof or in Article 22 hereof) to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder and such default shall continue for 15 days; or

(b) the Vendee or the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or

against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings (whether or not subject to ratification) in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceeding shall be commenced by, or against the Railroad for any relief which includes, or might result in, any modification of the obligations of the Railroad hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Railroad under this Agreement), and, unless such proceedings shall have

been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad, as the case may be, or for their respective property in connection with any such proceedings (whether or not subject to ratification) in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) an event of default shall occur under the Other Agreement referred to and defined in Article 3 hereof; then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Railroad set forth in Article 11 hereof, cause the Lease immediately upon such notice to terminate (and the Vendee and the Railroad each acknowledge the

right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate of 9-1/4% per annum, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the limitations of Article 3 hereof, or the Railroad wherever situated. The Vendee or the Railroad, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Railroad in writing to

that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee and the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Railroad set forth in Article 11 hereof, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee, the Railroad or any other person and for such purpose may enter upon the premises of the Vendee or the Railroad

or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Railroad, with or without process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall (subject to the rights of the Railroad set forth in Article 11 hereof), at its own expense forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity

retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession

thereof, at its election and upon reasonable notice to the Vendee, the Railroad and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Railroad set forth in Article 11 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Railroad or any other party claiming from, through or under the Vendee or the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling

or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendee and the Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Vendee and the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 16), and in

payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Railroad shall not otherwise alter or affect the Vendor's rights or the Vendee's or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's or the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall, subject to the limitations of Article 3 hereof, pay the amount of such deficiency to the Vendor upon demand, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid first to the Vendee to the extent of the Vendee's interest therein, and then to the Railroad, to the extent of its interest therein.

The Vendee will, subject to the limitations of Article 3 hereof, pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Law. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee, the Builder and the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee and the Railroad, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Rail-

road will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendee and the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Payment of Expenses. The Vendee will pay all reasonable costs and expenses incident to this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the Vendor.

ARTICLE 20. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedule and Annex hereto, exclusively and completely states the rights of the Vendor, the Builder, the Vendee and the Railroad with respect to the Hulks and the Equipment and supersedes all other agree-

ments, oral or written, with respect to the Hulks and the Equipment except the Hulk Purchase Agreement. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Vendee and the Railroad and, prior to the Cut-off Date, the Builder.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its place of business at the following specified addresses:

(a) to the Vendor, at 79 South Main Street, Salt Lake City, Utah 84111, Attention: Thomas Cuthbert, Trust Officer,

(b) to the Vendee, at Reno, Nevada 89504, Attention: D. O. Raggio, Executive Vice President,

(c) to the Railroad, at 526 Mission Street, San Francisco, California 94105, Attention: Vice President, Finance,

(d) to the Builder, at the address specified in Item 1 of Annex A hereto,

(e) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Railroad, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Vendor, the Vendee, the Railroad or the Builder, solely by reason of the fact that such person is an incorporator, stockholder, director, or officer, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the first paragraph of Article 6, the last paragraph of Article 14 and under Articles 5, 8, 9, 10, 12 and 13 hereof shall be deemed in all respects satisfied by the Railroad's undertakings contained in the Lease. The Railroad shall be liable in respect of its guaranty hereunder for such obligations under said Articles regardless of whether or not the Lease pro-

vides for the discharge of such obligations or is in effect. The Vendee shall not have any responsibility for the Railroad's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Railroad's undertakings under the Lease shall be effective unless joined in by the Vendor.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Nevada; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

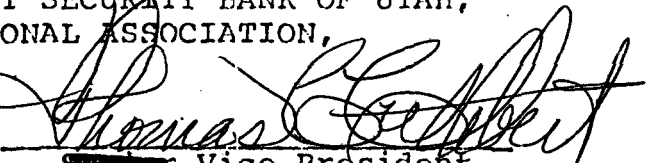
ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of June 1, 1972, for convenience, the actual date or dates of execution

hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.


FIRST SECURITY BANK OF UTAH,
NATIONAL ASSOCIATION,

by


~~Thomas C. Gilbert~~ Vice President

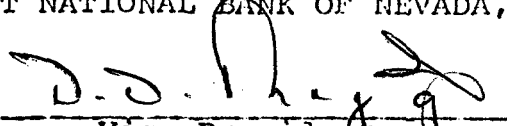
[Corporate Seal]

Attest:


~~Scott D. Allen~~
Trust Officer

FIRST NATIONAL BANK OF NEVADA,

by


~~D. D. Hays~~ Vice President Executive Vice President

[Corporate Seal]

Attest:


~~E. Martinelli~~
Secretary